

AMENDED IN ASSEMBLY JUNE 19, 1997

AMENDED IN SENATE APRIL 21, 1997

SENATE BILL

No. 819

Introduced by Senator ~~Polanco~~ Calderon
(Coauthor: Senator Polanco)

February 26, 1997

An act to amend Section 94892.5 of the Education Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 819, as amended, ~~Polanco~~ *Calderon*. Postsecondary education: English as a second language.

(1) Existing law, which is operative only until June 30, 1997, requires a private postsecondary educational institution, before enrolling a student in instruction in English as a second language (ESL), to document (a) the nature of the student's existing knowledge, training, or skills, and (b) that ESL instruction is necessary to enable the student to use that existing knowledge, training, or skills.

Existing law provides that if the results of a test indicate that the student has not attained adequate English language proficiency after the completion of ESL instruction at a private postsecondary educational institution, the institution shall make a full refund of the total charge for the ESL instruction or offer the student the choice of either enrolling without charge in additional ESL instruction until the student

attains adequate English proficiency or obtaining a full refund of the total charge for the ESL instruction.

This bill, instead, under these circumstances, would require the institution to offer the student additional instruction, without charge, for a period of up to 50% of the number of hours of instruction previously offered by the institution to the student, to enable the student to attain adequate English language proficiency.

The bill would require the Council for Private Postsecondary and Vocational Education to adopt regulations, as specified. The bill would require the council to develop and distribute instructions, information materials, or forms to assist institutions in developing the documentation. These instructions, materials, and forms would not be subject to review or approval by the Office of Administrative Law.

(2) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 94892.5 of the Education Code is
2 amended to read:

3 94892.5. (a) As used in this section, “ESL instruction”
4 means any educational service involving instruction in
5 English as a second language.

6 (b) No institution shall offer ESL instruction without
7 the prior approval of the council.

8 (c) The council shall not approve an institution’s
9 offering of ESL instruction unless that institution
10 complies with the minimum standards established in
11 Section 94781.

12 (d) An institution that offers ESL instruction to a
13 student shall not enroll the student in any educational
14 service presented in the English language unless the
15 student passes a test indicating that he or she has attained
16 adequate proficiency in oral and written English to
17 comprehend instruction in English.



1 (e) A student who has completed ESL instruction at
2 an institution shall not be enrolled in any course of
3 instruction presented in the English language at that
4 institution unless the student passes a test indicating that
5 he or she has attained adequate proficiency in oral and
6 written English to be successfully trained by English
7 language instruction to perform tasks associated with the
8 occupations or job titles to which the educational
9 program is represented to lead.

10 (f) If an institution offers ESL instruction to a student
11 to enable the student to use already existing knowledge,
12 training, or skills in the pursuit of an occupation, the
13 institution shall test the student after the student
14 completes the ESL instruction to determine that the
15 student has attained adequate proficiency in oral and
16 written English to use his or her existing knowledge,
17 training, or skills. Before enrolling the student in ESL
18 instruction, the institution shall document the nature of
19 the student's existing knowledge, training, or skills and
20 that the ESL instruction is necessary to enable the
21 student to use that existing knowledge, training, or skills.

22 (g) If an institution offers ESL instruction to a student
23 in connection with a course of instruction leading to
24 employment in any occupation requiring licensure
25 awarded after the passage of an examination offered in
26 English, the institution shall test the student after the
27 student completes the ESL instruction to determine that
28 the student has attained a level of proficiency in English
29 reasonably equivalent to the level of English in which the
30 licensure examination is offered.

31 (h) If the results of a test administered pursuant to
32 subdivision (d), (e), (f), or (g) indicate that the student
33 has not attained adequate English language proficiency
34 after the completion of ESL instruction, the institution
35 shall offer the student additional instruction without
36 charge, for a period of up to 50 percent of the number of
37 hours of instruction previously offered by the institution
38 to the student, to enable the student to attain adequate
39 English language proficiency.

(i) This section does not apply to grantees funded under Section 1672 of Title 29 of the United States Code.

(j) The institution shall, for five years, retain an exemplar of each language proficiency test administered pursuant to this section, an exemplar of the answer sheet for each test, a record of the score for each test, the answer sheets or other responses submitted by each person who took each test, and the documentation required by subdivision (f).

(k) (1) In addition to any applicable provisions of this chapter, this article, except for Sections 94866 to 94873, inclusive, subparagraph (B) of paragraph (2) of subdivision (a) of Section 94884, and Section 94898, applies to institutions offering ESL instruction.

(2) For the purpose of determining compliance with this article, ESL instruction shall be deemed a course and a charge shall be deemed to be made for ESL instruction if a student is obligated to make any payment in connection with any educational service, including, but not limited to, the ESL instruction that is offered by the institution.

(l) The tests used by an institution pursuant to this section shall be tests that are approved by the United States Department of Education or tests such as the Test of English as a Foreign Language and the Comprehensive Adult Student Assessment System that are generally recognized by public and private institutions of higher learning in this state for the evaluation of English language proficiency. An institution shall demonstrate to the council that the tests and passing scores that it uses establish that students have acquired the degree of proficiency in oral and written English required by subdivision (d), (e), (f), or (g), whichever is applicable. The required level of proficiency in oral and written English shall not be lower than the sixth grade level.

(m) All tests shall be independently administered, without charge to the student and in accordance with the procedures specified by the test publisher. The tests shall not be administered by a previous or current owner, director, consultant, or representative of the institution

1 or by any person who previously had, or currently has, a
2 direct or indirect financial interest in the institution other
3 than the arrangement to administer the test. The council
4 shall adopt regulations that contain criteria to ensure
5 independent test administration including the criteria
6 established by the United States Department of
7 Education and set forth on pages 52160 and 52161 of
8 Volume 55 of the Federal Register, dated December 19,
9 1990.

10 (n) The council shall adopt regulations concerning the
11 manner of documenting the nature of a student's existing
12 knowledge, training, and skill and that ESL instruction
13 offered by the institution is necessary to enable the
14 student to use that existing knowledge, training, and skill,
15 as prescribed in subdivision (f). The regulations shall
16 specify all of the following:

17 (1) Reliable sources of information, independent of
18 the student and the institution, from which
19 documentation of a student's existing knowledge,
20 training, and skill shall be obtained.

21 (2) Circumstances that must be documented by the
22 institution to establish that information from a designated
23 reliable source of information cannot reasonably be
24 obtained.

25 (3) Alternate acceptable sources of information if
26 designated reliable sources are not available.

27 (4) The nature of all required types of documentation.

28 (o) The council shall develop and distribute
29 instructions, informational materials, or forms to assist
30 institutions in developing the documentation described
31 in this section. These instructions, materials, and forms
32 shall not be subject to review or approval by the Office of
33 Administrative Law pursuant to any provision of the
34 Government Code.

35 SEC. 2. This act is an urgency statute necessary for the
36 immediate preservation of the public peace, health, or
37 safety within the meaning of Article IV of the
38 Constitution and shall go into immediate effect. The facts
39 constituting the necessity are:

1 In order to remedy existing problems with
2 English-as-a-second-language programs and to eliminate
3 inconsistencies regarding the refund policies of the state
4 and federal governments for these programs, it is
5 necessary that this act take effect immediately.

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